UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case No. 23-3128

CHRISTOPHER ALBERTS.

Appellant

v.

THE UNITED STATES OF AMERICA,

Appellee.

Criminal Action No. 1:21-cr-00026-CRC-1

APPELLANT ALBERTS' RESPONSE AND OPPOSITION TO UNITED STATES' MOTION TO VACATE CONVICTIONS AND REMAND FOR DISMISSAL

Appellant Christopher Alberts, by and through undersigned Counsel, hereby responds and opposes the United States' Motion to Vacate and Remand for Dismissal.

On January 20, 2025, President Donald J. Trump issued a blanket pardon on behalf of more than 1,500 January 6 defendants (including Alberts) seemingly putting an end to Alberts' long ordeal in the federal criminal justice system. Alberts was serving an outrageously harsh, seven-year federal prison term for exaggerated claims of "assaulting officers," "civil disorder," and mere possession

of a firearm on Capitol Grounds. Like many January 6 defendants, Alberts had a spotless criminal record prior to January 6 and was a first-time offender. Alberts was also a decorated combat veteran and a multiple-life-saving volunteer first responder in his home state of Maryland.

There are many collateral consequences of being merely pardoned without being further exonerated on the merits.

For many reasons, including (1) the availability and viability of potential future civil litigation, (2) career, social, livelihood, and occupational advancement, and (3) the need to correct the historical record, Alberts deserves an opportunity to fully litigate his appeal on the merits. A pardon is an act of grace by the executive branch and has little effect on the legal precedents and judgments in Alberts' case.

The Pardons Leave a landscape of pro-prosecution legal precedents unworthy of a constitutional order; the DC District Court is now the most prosecution-friendly venue in the entire federal court system.

Although President Trump has graciously pardoned the January 6 ("J6") defendants, the pardons leave a landscape of tortured precedents worthy of a third-world despotism. The trial precedents in the U.S. District of D.C. have seen a frenzied

Draconian one-upsmanship as prosecutors leapfrogged over each other to impose the utmost punishment upon J6ers. This has occurred in a favorable venue where the government held every possible advantage.

The U.S.D.D.C. courts have largely allowed the Justice Department to run roughshod over the rights of J6ers, in a manner never seen in any other context in any other venue. With a few exceptions, the United States has imposed (1) extremely punitive charging decisions, often asserting heretofore-unheard-of applications of novel legal theories or the twisting of statutes in unprecedented ways, (2) extreme detention, bail, and pretrial release demands, (3) extreme and unusual applications of the Rules of Evidence to advance novel prosecutions while foreclosing defenses, and (4) extreme sentencing recommendations, with unprecedented applications of sentencing enhancements and upward variances.

Average sentences for J6ers are the harshest sentences in American history relating to any political demonstrations or rioting.

An Entirely Concocted Narrative by the United States.

In J6 cases, U.S.D.D.C. judges have given the United States leeway to manufacture and concoct an entirely false narrative of January 6: as *an "attack"* upon the U.S. Capitol, upon Congress, or upon police officers.

In every J6 case (including Alberts' case) prosecutors began by filing pretrial motions to prohibit the public from seeing the basic discovery, pretending that video footage might 'expose national security secrets' by revealing the 'super top secret' locations of surveillance cameras at the Capitol. (The camera locations in question were mostly in areas where millions of Americans have likely seen the cameras during public tours of the Rotunda, Crypt and hallways.) The United States follows up with motions to preclude (1) all arguments of entrapment or "entrapment by estoppel," (2) any 1st amendment defense, and (3) any conduct or misconduct of law enforcement. Undersigned counsel believes that every District judge granted virtually every one of these motions in every January 6 case.[1]

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[1] Two noteworthy exceptions are Judges Kelly and Friedman, who did allow First Amendment jury instructions in two J6 trials our firm litigated.

Each J6 trial began with the government showing video and audio montages of violence by J6 defendants other than the defendant (often over objection), and with prosecutors being able to present evidence of screaming and crying cops (often over objection) which the defendant had no knowledge or involvement.

By such tricks of rhetoric, concealment, and motion practice, the United States transformed a mere 6-hour delay[2] of Congress (in which no member of Congress was ever in the same room as any J6er and the precious electoral college process was never in any danger of being scuttled) into an act of terror and "insurrection."

This savage overprosecution has made the U.S. District Court of the District of Columbia into the most prosecution-friendly court venue in the entire federal court system as of January 20, 2025. President Trump has pointed to the one-sided nature of these prosecutions as reasons for needing to grant his pardons of January 6 defendants and restore balance.

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[2] Actually there were only demonstrators inside the Capitol for 2 hours and

In the Wake of Trump's Pardons, U.S.D.D.C. Trial Judges are already Trumpeting the Long-Lasting "Findings" of the January 6 Trial Precedents.

As if to prove Alberts' point, several U.S.D.D.C. trial judges have already publicly pronounced that the tyrannical precedents established in January 6 prosecutions will be long-lasting. Just yesterday (Jan. 22) Judge Chutkan pronounced in a written order that:

> No pardon can change the tragic truth of what happened on January 6, 2021. On that day, 'a mob professing support for then-President Trump *violently attacked the United States Capitol'* to stop the electoral college certification. The dismissal of this case cannot undo the 'rampage [that] left multiple people dead, injured more than 140 people, and inflicted millions of dollars in damage.'
>
> It cannot diminish the *heroism of law enforcement officers* who 'struggled, facing serious injury and even death, to control the mob that overwhelmed them.' It cannot whitewash the blood, feces, [??] and terror that the mob left in its wake. And it cannot repair the jagged breach in America's sacred tradition of peacefully transitioning power.
>
> In hundreds of cases like this one over the past four years, judges in this district have administered justice without fear or favor. The **historical record established by those proceedings must stand**, unmoved by political winds, as a testament and as a warning."

U.S. District Judge Chutkan, in *United States v. John Banuelo*[3]

As Judge Chutkan says, the rulings in January 6 cases in the District Court "will stand" unless this Court of Appeals, or the Supreme Court, overrules and overturns these precedents. Judge Chutkan explicitly repeats plainly false, even disproven suggestions which were created and fostered by federal prosecutors and uncritically received by trial judges: (1) the proposition that a political protest aimed at persuading policymakers is an "attack" on those policymakers (or even the building) (and thus is devoid of 1st amendment protection; or even any analysis), (2) the suggestion that January 6 defendants produced "deaths" of anyone other than protestors themselves (they did not), (3) the idea that "feces" was spread on walls of the Capitol walls by January 6 defendants (this lawyer knows of no evidence of this ever filed in any court case; nor any testimony nor even a single photograph provided in discovery), and (4) that law enforcement officers were monolithically heroic on January 6.

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[3] Reported in https://www.msn.com/en-us/news/politics/judge-chutkan-trump-pardons-won-t-change-tragic-truth-of-jan-6-capitol-riot/ar-AA1xGjqi?ocid=BingNewsSerp

Alberts himself was subjected to (and witnessed) excessive force by law enforcement on January 6. The very "search and seizure" in this case was initiated by an officer literally beating Alberts to the ground with a baton strike to the back of Alberts' head (which is categorically deadly force and excessive force). Alberts was also shot in the groin area by exploding pepper balls by law enforcement (also categorized as improper use of force by police). Alberts also witnessed unlawful excessive force during his ascent on exterior Capitol steps when he witnessed officers pushing another protestor over a concrete railing; thus sending the protestor to his death or serious injury before Alberts' very eyes; thus triggering some of Alberts' conduct that followed after. Alberts also rendered First Aid to another protestor on the north side of the Capitol whose lips and mouth had been torn off or badly injured by police rubber bullets to the man's face (also unlawful, excessive, and improper deadly force by police).

But Alberts was denied or severely limited, in presenting this evidence due to the trial judge's rulings. (And these same types of rulings prevail across many or most January 6 cases.) In January 6

cases, the government succeeded in having all of its expert witnesses certified as experts, while virtually every effort to certify expert witnesses on behalf of J6 defendants was denied. (Just as in many J6 trials, Alberts was virtually compelled to take the witness stand to defend himself when the trial court denied his expert use-of-force witness. Then—just as in so many other J6 cases—Alberts was punished for taking the witness stand with the imposition of far-fetched "perjury" sentencing enhancements.)

Federal Courts have a Duty to Restrict Arbitrary Government Power and Uphold the Rule of Law.

In the words of Jeffrey M. Sharman of the American Bar Association:

> The judicial system of the United States is founded upon a number of interrelated principles. The first of these principles is the rule of law, which is needed in order to restrict arbitrary government power. The rule of law is put into effect through a constitutional system by which power is separated and balanced among three branches of government. Under the separation of powers, the judiciary functions as an independent branch of government so that it may enforce the rule of law. Judicial independence, though, must be tempered with a certain degree of judicial responsibility. An independent judiciary can properly enforce the rule of law only if it is learned in the law and is characterized by impartiality and integrity.

Jeffrey M. Sharman, *Judicial Ethics: Independence, Impartiality, and Integrity* 1 (1996).

Thus the courts have an affirmative duty to correct bad case law. Accordingly, Alberts opposes the government's motion and requests that this appeal continue to decision on the merits.

DATE: January 23, 2025

Respectfully Submitted,

/s/ Roger I. Roots

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that this motion complies with the type-volume limitation because it contains 1,882 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Cir. R. 32(a)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typeface style requirements of Fed. R. App. P.

32(a)(6) because the brief was prepared in 14-point Bookman Old Style font using Microsoft Word.

Dated: January 23, 2025 */s/Roger Roots*

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c) and Cir. R. 25(c), that on January 23, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

Dated: January 6, 2025 */s/Roger Roots*